

## **EXECUTIVE SUMMARY**

### **FLRA GENERAL COUNSEL JOSEPH SWERDZEWSKI'S MEMORANDUM TO REGIONAL DIRECTORS ON "PRE-DECISIONAL INVOLVEMENT: A TEAM-BASED APPROACH UTILIZING INTEREST-BASED PROBLEM SOLVING PRINCIPLES"**

This Executive Summary of the Federal Labor Relations Authority, General Counsel's Guidance Memorandum to the Regional Directors discusses the concept of "pre-decisional involvement" and its implementation utilizing a team-based approach which relies upon interest-based problem solving skills, techniques and strategies.

The Memorandum serves as guidance to the Regional Directors in educating the parties on the benefits of collaborative approaches to labor-management relations and in assisting them in their efforts to improve those relationships. The Guidance also implements the Office of the General Counsel Facilitation, Intervention, Training and Education Policy (FITE) which sets forth the principles and criteria that the Office of the General Counsel follows when working with the parties and delivering FITE activities to further the development of collaborative relationships and dispute resolution.

The Guidance Memorandum is divided into four parts which address the concept of pre-decisional involvement and what it is and where it comes from? (Part I), the benefits of engaging in pre-decisional involvement - why do it? (Part II), the relationship between pre-decisional involvement and the statutory duty to bargain - what must be decided before you begin about what you will do after it is done? (Part III), and the use of interest-based principles and teams to accomplish pre-decisional involvement - a model on when and how to do it (Part IV). Attached to this Guidance is a step-by-step approach for the Regions to use when assisting the parties in designing a pre-decisional involvement process. The Guidance Memorandum and this Executive Summary reflect the views of the General Counsel and do not constitute an interpretation by the Authority Members.

## **PART I**

### **WHAT IS PRE-DECISIONAL INVOLVEMENT AND WHERE DID IT COME FROM?**

#### **Q. #1: What is "pre-decisional involvement?"**

Simply stated, "pre-decisional involvement" is a term which represents those activities where employees through their elected exclusive representative are afforded by agency management the opportunity to shape decisions in the workplace which impact on the work the employees perform.

#### **Q. #2: Where did this concept originate?**

The preamble of the Executive Order provides that "[t]he involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's Government reform objectives." Pre-decisional involvement is a vehicle that provides for that "involvement."

#### **Q. #3: Is pre-decisional involvement important to collaborative labor-management relations?**

In the General Counsel's view, pre-decisional involvement is the cornerstone of Executive Order 12871, as amended, "Labor-Management Partnerships."

#### **Q. #4: Does pre-decisional involvement expand the number of subjects over which there is a duty to bargain under the Federal Service Labor-Management Relations Statute (Statute)?**

No. It does not expand the topics which are mandatorily negotiable under the Statute.

#### **Q. #5: Does pre-decisional involvement require either the union or the agency to waive or give up any rights under the Statute?**

No. Pre-decisional involvement does not waive management's statutory right to make decisions under section 7106 of the Statute, nor does it waive a labor organization's right to engage in bargaining prior to implementation to the extent required by the Statute.

#### **Q. #6: What does pre-decisional involvement provide for?**

It represents a process where unit employees who perform the daily tasks that collectively accomplish the mission of the agency have input into a decision-making process in order "to design and implement comprehensive changes necessary to reform Government" and "to champion change in Federal Government agencies to

transform them into organizations capable of delivering the highest quality service to the American people, as expressed in the Executive Order."

**Q. #7: What prerequisites do the agency and union have to meet before embarking on a pre-decisional involvement process?**

In order to be successful, it is critical that both parties to the relationship, labor and management:

- have a common understanding of what pre-decisional involvement, as they themselves define it, means;
- share a mutual appreciation of why it is in their own best interest to engage in pre-decisional involvement;
- have similar expectations of the results they seek to obtain from pre-decisional involvement; and
- agree on what actions occur after pre-decisional involvement has concluded.

**Q. #8: What are the basic principles underlying the concept of pre-decisional involvement?**

These are the basic principles of pre-decisional involvement::

- The process begins early when ideas are forming;
- The parties have common expectations;
- Information is freely shared throughout the process and there is an understanding on confidentiality of the information and the process;
- The participants utilize a problem solving approach founded on interest-based principles;
- The participants adapt a team approach to their activities; and
- The parties and the participants demonstrate a high degree of commitment to the process and to achieving their shared expectations.

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**PART II**  
**THE BENEFITS OF ENGAGING IN PRE-DECISIONAL INVOLVEMENT -**

## **WHY DO IT?**

**Q. #1: Should a party engage in pre-decisional involvement just because it is "the thing to do?"**

No. No party should engage in pre-decisional involvement unless that party believes that it is in its interest to do so. No party should engage in pre-decisional involvement unless it has willingly participated in a process to develop exactly what pre-decisional means, how it will be accomplished, what the parties hope to get out of the process and what actions will occur upon the conclusion of the process.

**Q. #2: Then why should a party engage in pre-decisional involvement?**

Because it makes sense as a means to accomplish the agency's mission and it is essential to transform agencies into organizations "capable of delivering the highest quality service to the American people," as envisioned by the Executive Order and the National Performance Review.

**Q. #3: Does the Executive Order explain how the parties should "involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission?"**

No. The Executive Order, however, does not define the term "involvement" nor does the Executive Order establish at what stage of the decision-making process this "involvement" should occur or how this "involvement" should be accomplished.

**Q. #4: Who then decides these critical issues?**

These matters are left for the parties, through their partnership councils, to deliberate and decide. The Guidance Memorandum sets forth a model of pre-decisional involvement that the Office of the General Counsel has developed in working with parties under the Executive Order.

**Q. #5: Why should employees be involved in the decision-making process? Isn't that management's job and responsibility?**

The ultimate responsibility for making management decisions rests with management. Management manages the agency and unions represent bargaining unit employees. However, management decisions on how work should be performed must be implemented - and it is employees who perform those work tasks. Those employees have valuable suggestions on such matters as ways to work better and cost less, achieve significant results for the money spent, provide value to customers and stakeholders, deliver products and services on time, bring recognition to the agency for the services it provides and foster a productive and constructive labor-management relationship.

**Q. #6: Why is it necessary to deal with the union if it is the employees who have the suggestions?**

When employees are in bargaining units under the Statute exclusively represented by a labor organization which was chosen in a secret ballot election to represent the interests of those employees in workplace matters, the union is the means to tap into those employees' extensive hands-on experience.

**Q. #7: What are the benefits of pre-decisional involvement?**

- Better decisions.
- Fuller implementation of decisions.
- Greater support of the decisions.
- More timely implementation.
- Any subsequent collective bargaining will be facilitated.

**Q. #8: What are the risks of pre-decisional involvement?**

- Increased investment of time.
- Increased administrative costs.
- Collective bargaining under the Statute may still be necessary.

**Q. #9: Is pre-decisional involvement an end in and of itself where "the box needs to be checked?"**

No. Pre-decisional involvement is a means to better decisions which are timely and fully implemented with the intended results. It is not an end in and of itself. Rather, it is a tool or method to achieve a goal which is in the interests of employees, labor organizations and agencies, the delivery of the "highest quality services to the American people," as envisioned by the Executive Order.

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**PART III**  
**THE RELATIONSHIP BETWEEN PRE-DECISIONAL INVOLVEMENT**  
**AND THE STATUTORY**

## **DUTY TO BARGAIN - WHAT HAPPENS AFTER YOU DO IT?**

### **Q. #1: Does pre-decisional involvement mean that there is no need to bargain afterwards?**

Maybe. Successful pre-decisional involvement may obviate the need for other bargaining under the Statute, or may facilitate any bargaining that is required at the conclusion of the decisional involvement process. But the decision to engage in a pre-decisional involvement process does not disadvantage the agency or the union with respect to any statutory rights.

### **Q. #2: What alternatives may occur after pre-decisional involvement has been completed?**

- Recommendation adopted. The parties accept the option(s) presented by the team and there is no need for statutory bargaining.
- Recommendation modified and accepted. The parties modify the option(s) presented by the team and there is no need for statutory bargaining.
- Statutory bargaining required. The parties accept none or some of the options presented by the team and engage in statutory bargaining limited to the areas where the team options were not accepted as presented or modified.

### **Q. #3: Is it important that the parties understand that bargaining under the Statute might have to occur after pre-decisional involvement?**

It is more than important - it is critical! Both parties should fully recognize the possibility that it may indeed be necessary to engage in some statutory bargaining after pre-decisional involvement and prior to implementation of a change which otherwise triggers a duty to bargain under the Statute. Our experience has shown that conflict can occur when the parties do not have a common understanding of this concept.

### **Q. #4: Then why should a party, particularly an agency, engage in pre-decisional involvement if it is not guaranteed to replace bargaining under the Statute?**

Properly implemented pre-decisional involvement results in better decisions, faster and full implementation, and less conflict, even if bargaining is still required. Seldom do both parties agree that they will be bound by any recommendation that is generated by a team or work group as part of a pre-decisional involvement process. If the parties recognize and articulate their respective interests and set forth the standards which any solution must meet, there is a high possibility that the team members will be able to produce options which provide the basis for the best solution.

### **Q. #5: Is the pre-decisional process a barrier or facilitator of the bargaining that must still take place?**

If properly implemented, pre-decisional involvement serves to assist the subsequent bargaining process. Since the parties already have a full understanding of the issue, their respective interests, and the extent to which the team proposed options meet those interests, they may agree to post-implementation bargaining, or to partial implementation on those matters where there is no disagreement, or to an expedited bargaining schedule.

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## **PART IV**

### **THE USE OF INTEREST-BASED PRINCIPLES AND TEAMS TO ACCOMPLISH PRE-DECISIONAL INVOLVEMENT - A MODEL ON WHEN AND HOW TO DO IT**

**Q. #1: What are the initial matters that should be agreed upon by the parties to determine whether pre-decisional involvement is appropriate?**

The parties should come to a common understanding on the following matters:

- The issues or types of issues that are appropriate for pre-decisional involvement.
- The information that the agency will provide to the union when the pre-decisional involvement process is triggered.
- The factors that the union will evaluate to determine whether it will engage in pre-decisional involvement.
- The range of options for the union to choose from in determining whether to engage in pre-decisional involvement.
- The consequences of a union decision not to engage in pre-decisional involvement.
- Circumstances which allow the union to initiate the pre-decisional involvement process.

**Q. #2: What are some of the basic issues that the parties must address in structuring a pre-decisional involvement process?**

The parties participating in the pre-decisional process should jointly reach a common understanding on such matters as the charge, size and membership of the team, the role of team members, what matters are "off the table," time limitations, time

commitment, format of the final work product, information needed, and the decision-making process. These general topics are more fully developed in the Guidance Memorandum.

**Q. #3: What are some of the basic issues that the team members must address before the team begins operation?**

The team members should have a common understanding on such general matters as the scope of their charge, expectations, limitations, decision-making process, standards and interests that any solution must meet, method of team operation, commitment to the task, information and resources needed, format of final work product, confidentiality and skills needed. These general topics also are more fully developed in the Guidance Memorandum.

**Q. #4: How can the parties apply interest-based principles to a pre-decisional team-based process?**

The Guidance sets forth one model for the use of interest-based problem solving by a team charged with developing solutions to workplace issues in a pre-decisional setting. In sum, the model utilizes teams which are charged with brainstorming solutions and analyzing the extent to which various options meet the interests and standards that have been identified by a partnership council composed of the leadership of the entities that have agreed to utilize a pre-decisional process. The model also provides for individual team members to present their independent interests that may not have been recognized by the partnership council.

**Q. #5: Can you practice pre-decisional involvement if you do not have a partnership council?**

Yes. This model provides for union and agency leaders, plus any other entity that is participating (such as a mid or executive level manager's group) to serve as decision-makers. These leaders normally would comprise a partnership council where one existed.

**Q. #6: What is the role of the partnership council?**

The partnership council decides the matters described above in question # 2. In particular, the partnership council identifies the issue, drafts the charge, and develops the standards that any solution developed by the team must meet. Further, each entity participating in the process identifies their interests which must be satisfied by any solution.

**Q. #7: Why does the model provide that the standards and interests are developed by the partnership council?**



This model allows the parties to ensure that their institutional interests have been identified and will be met by any proposed solutions. Some employees and managers selected to participate on a team may not know or share the institutional interests of their principals. Sometimes, the principals themselves have not given the identification of their interests the proper attention. This model ensures that all institutional interests are identified before the team begins its work and expends its resources.

**Q. #8: What is the role of the team?**

As noted in question #4, the model also provides an option for individual team members to present their independent interests that may not have been recognized by the partnership council. Whether or not this occurs, the team is charged with brainstorming options to resolve the issue in the charge and evaluating the extent to which various options meet the interests of all of the parties in a manner that is consistent with the previously established standards.

**Q. #9: Who do the team members represent?**

Under this model, the team members represent the party that selected them for participation on the team. The members are not "independent operators," but represent the often broader interests of the party they represent. All team members are charged with developing options that best meet the previously identified interests of all the parties and which are consistent with the standards developed by the partnership council and any team members if that option is selected.

**Q. #10: Who makes the final decision?**

In this model, the partnership council engages in the decision-making process. The partnership council may modify the options presented by the team. The ultimate decision maker may be the partnership council itself or, if that authority has not been delegated by the agency, by the appropriate high level agency official with responsibility for the issue. The model also provides for an option to delegate the final decision-making authority to the team.

**Q. #11: Does the model provide for subject matter experts?**

Yes. This model also provides for subject matter experts to be selected by the agency, or jointly by the agency and the union, to serve as technical experts. These subject matter experts may be managers, unit employees who are union members, unit employees who are not union members or unrepresented employees. These technical experts are not serving as union or agency representatives, but rather serve on the team as expert advisers pursuant to the assignment of work.

**Q. #12: What is the team's final work product?**

Any options recommended by the team should be consistent with the standards and the interests articulated by the partnership council prior to the commencement of the team's efforts. A written report could be used to analyze how each of the recommended options meets the interests which had been expressed and the extent to which it meets those interests. The model also allows the team the option to prioritize options, based on the team's collective assessment of the extent to which a solution meets the interests and is consistent with the criteria. If the team cannot reach consensus on prioritizing options, the report details the extent to which each supported option satisfies, and does not satisfy, the various interests represented on the team. The technical experts participate as subject matter resources during this evaluation process, but do not participate as a principal of the team in determining the prioritization of the options.

**Q. #13: What are the options for the partnership council when presented with the team's work product?**

Unless the team has been delegated final decision-making authority, the partnership council has the option to return the work product to the team with further instructions or to clarify certain questions raised by the partnership council, accept or modify the options, or create a new option to recommend to the ultimate decision-maker, if the partnership council itself has not been granted that authority. The partnership council reports its action to the team, regardless of the action taken.

**Q. #14: Why isn't the team under this model always empowered to engage in a final decision-making process?**

The team may be delegated final decision-making authority. However, even if no delegation occurs, the team does engage in a decision-making process to the extent that the team evaluates the various options and attempt to prioritize the options based on the extent to which they meet all of the parties' interests and are consistent with the standards. The model allows the team members to focus their energies on the development of solutions to the issue, rather than become entrenched in attempting to reach consensus on one final decision.

**Q. #15: Why does the model move the decision-making process to the partnership council?**

Our experience has shown that most team recommendations are usually modified by the ultimate decision-maker(s) prior to acceptance. This model enhances the use of time and talents by utilizing the leadership to develop the parameters of any solution (identification of the issue, the standards and identification of the parties' interests), allowing the team members to use their knowledge skills and abilities and experiences to formulate proposed solutions (brainstorming and evaluation), and providing for final decision-makers by those leaders who are responsible for making decisions (either the steering committee or the ultimate agency decision maker). However, there are also alternatives presented where the team itself can be

delegated to be the final decision-maker and where the team members may raise their individual interests that may not have been recognized by the parties.

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## **A GUIDE TO DESIGNING A PRE-DECISIONAL INVOLVEMENT PROCESS**

GROUP	STEP	ACTION
Agency Executives and Union Leadership	1	The Agency and the Union Determine if They Will Engage in Pre-Decisional Involvement Over a Particular Matter.
Agency and Union Representatives	2	Representatives of the Agency and the Union Come to a Common Understanding on the Relationship Between the Pre-Decisional Involvement Process and the Statutory Duty to Bargain.
Partnership Council	3	The Agency and the Union (and any Other Entities Involved in the Process) Come to a Common Understanding on the Structure of Their Pre-decisional Involvement Process.
Partnership Council	4	The Partnership Council Identifies the Interests of the Agency and Union That Must be Satisfied by the Team's Recommendations and the Standards With Which any Solution Must be Consistent.
Partnership Council	5	The Partnership Council Creates the Charge of the Team and Meets with the Team to Discuss the Charge.
Pre-Decisional Involvement Team	6	The Pre-Decisional Involvement Team Meets and Reaffirms a Common Understanding Among All Team Members of their Charge and Fulfills Its Charge.
Partnership Council	7	The Partnership Council Reviews the Teams' Work Product and Takes Appropriate Action.